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AUG 14 2008

OFFICE OF PETITIONS

In re Application of :
Meltzer et al. : DECISION ON
Application No. 09/173,858 : PETITION
Filed: October 16, 1998 :
Atty Docket No. OIN 1004-1 :

This is a decision on the PETITION UNDER THE 37 CFR 1.183 REGARDING ENTRY OF RULE 131 DECLARATIONS BY FEWER THAN ALL INVENTORS filed July 21, 2008.

The petition under 37 CFR 1.183 is **GRANTED to the extent indicated herein.** This is not a decision on the merits of the 1.131 declaration.

The above-identified application was filed on October 16, 1998. A 37 CFR 1.63 declaration signed by all of the inventors (Meltzer, Allen, Fuchs, Glushko and Maloney) was filed on December 21, 1998. On July 21, 2008, applicants filed inventor's declarations under rule 131, by all of the inventors except inventor Allen.

Applicants have filed the instant petition to have the 37 CFR 1.131 declarations accepted without the signature of inventor Allen. Applicants request waiver of the signature of an unavailable inventor and acceptance of other evidence as well. Applicants state that inventor Allen signed the original 1.63 declaration, but refuses to sign the 1.131 declaration. Applicants state that inventor Allen previously refused to accept by mail a draft declaration and again is unavailable to sign an affidavit or declaration under 37 CFR 1.31, because he refused our mail. In support thereof, applicants submit a declaration of facts of Brianna Dahlberg, attesting to the

attempts to present the 1.131 declaration to inventor Allen, as well as, copies of the Express Mail envelopes which transmitted the 1.131 declaration as returned and refused by inventor Allen.

37 CFR 1.131 states, in pertinent part:

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicant does not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR 1.131 declaration include all of the joint inventors.

In order for a petition under 37 CFR 1.183 to be granted to waive the requirement that all of the joint inventors sign the 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

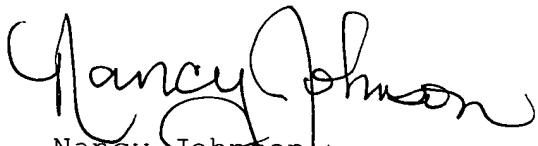
On instant petition, applicants have set forth the steps taken to obtain joint inventor Allen's signature on the 1.131 declaration. Applicants have shown that a bona fide effort was made to present the 1.131 declaration to inventor Allen and documentation supporting a conclusion that inventor Allen refused the presentation. Applicants have provided 1.131 declarations signed by all of the other joint inventors. Under the circumstances, it is concluded that petitioner has demonstrated that this is an extraordinary situation, warranting waiver of the rules.

The petition is granted to the extent that the 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied. This is not a decision on the merits of the declaration or on any other evidence presented.

The \$400 fee required for consideration of this petition under § 1.183 has been charged to Deposit Account No. 50-0869 (OIN 1004-1), as authorized.

Technology Center AU 2178 has been advised of this decision. The application is, thereby, forwarded to the Technology Center for further action by the examiner in light of this decision granting waiver of the requirement that all of the inventors sign the 1.131 declaration.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.


Nancy Johnson
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Office of Petitions